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File No. 25/51

Legal Dept.

G **BRANCH**

Subject:—

Opinions on the Constitution.

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File No. 25/51

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C O N T E N T S.

Legal Department File No. O. Constitution/51

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5 Copies.

Legal Department.

This relates to two similar applications addressed to Honourable Chief Minister and Honourable Minister, Civil Supplies by Shri Hiranand J. Advani an inmate of the Kalyan Relief Camp. Camp, complaining against the distinction shown in the matter of distribution of foodgrains and sugar between one ration area and another in respect of quality, variey and quantity. His main contention is that the inmates of the Kalyan Camp are getting half th the quantity or sugar supplied to the public in Greater Bombay and as regards foodgrains unwanted articles such as red Juwar is supplied to them in greater quantities than is supplies in Bombay. He therefore states that under the New Constitution no such distinction in the matter of general administration could be made and there is a move afoot in the Camp to challenge these discriminatory orders of Government in the High Court. The applicant, however, does not believe in critisizing Government but in helping them with practical suggestions. In the end he requests Government to issue orders immediately for supplying the same quantity of sugar as is being supplied in Bombay. He has also appealed fo for doing away with fed Juwar altogether and ~~for increase in the~~ fixing not more than ½ seer of white Juwar and for increase in the quantities of rice or wheat or both within the 12 ozs. margin of rations per day. As directed by the Honourable Minister, Civil Supplies applications are sent to L.D. for consideration.

The quantum of rationed foodgrains throughout the State of Bombay wherever rationing is introduced is fixed at a uniform rate of 9 ozs. As the measures now used by that Department are in seers, the quantum per adult per week works out to 1 $\frac{15}{16}$ seers. There is therefore no discrimination in the supply of rationed foodgrains to persons residing in this State. With in this fixed quantum of 1 $\frac{15}{16}$ seers per adult, the various Rationing authorities are permitted to fix the quantum in respect of different kinds of foodgrains in accordance with their availability and the supply position. It would be impossible for any Government to supply the same kind of foodgrains to all the persons in rationed areas in the State in the same quantity. The Rationing authorities are faced with Transport difficulties also and the action of the various rationing authorities in fixing different grains within the uniform margin of 1 $\frac{15}{16}$ seers is intra vires.

So far as suggr is concerned, it is true that in Greater Bombay and the 33 villages of Thana District the sugar quantum fixed is 6 oz. per week whereas all over the State excluding Greater Bombay and said villages, it is 3 ozs. But sugar is not a rationed article as declared under any of the Rationing Orders. Its distribution is only made through authorized Ration shops. Cube sugar and Khandsari sugar are available in the market.. There is no restriction even on the sale of crystal sugar. Thus the position of distribution of sugar is not the same as that of rationed foodgrains. No such foodgrains are available in rationed areas except through the ration shops. The quota of sugar for Bombay and the districts

is fixed on the basis of its pre-war consumption. Statistics have shown that very little sugar was consumed in the villages whereas Bombay had the topmost consumption owing to the excessive tea-habit of its residents. Uniformity of supply has therefore has been maintained in all the districts and no distinction has made between the residents of urban and rural areas of the same district. According to the availability of supplies, the districts cannot be brought on a par with Bombay but even if Bombay is to be brought on a level with the districts, the districts will not be benefited much as the population of all the districts taken together is about 10 times that of Bombay. Thus reduction in the quota of of Bombay will not result in increase in the quota of the districts by even ½ oz. per head per week.

The American Courts have held that the fundamental rights based on the Equality clause is not offended against, if a classification based on reasonable gfounds relating to the subject matter is made. This principle has been accepted by the Bombay High Court in the Prohibition case. The classification in the present case can be supported and the action of the Rationing authorities therefore is not in conflict with articles 14 and 15 of the Constitution.

o/c Sd/-
6/2
Additional Secretary to Government.

U.R. to C.S.D., No. G-58 dated the 8th February 1951.

C.G.R./26-7 C 5

Office of the R.L.A.

Paragraph 4(1) of the Adaptation of Laws Order, 1950 was amended by paragraph 4 of the Adaptation of Laws (Amendment) Order, 1950 issued on 5th June 1950 but which was deemed to have come into force on 26th January 1950. By this amendment for the words 'existing Central law' inparagraph 4(1) of the Principal Order the words "existing Central, Madras and Bombay Law" were substituted. Existing Central law is defined in paragraph 2(1) (b) of the Principal order to mean any law in force in the territory of India immediately before 26th January 1950 but does not include -

i) an existing Provincial Law,

ii) an existing State law or

iii) an act of Parliament of the United Kingdom or any order in Council, rule or other instrument made under such an Act.

The Adaptation of Laws Order, 1950 was made by the President in exercise of the powers under Article 372(2) of the Constitution of India. Explanation I to Article 372 provides that the expression 'law in force' in that article shall include a law passed or made by a Legislature or other competent authority in t the territory of India before the commencement o of the Constitution and not previsously repealed The definition is therefore inclusive and the expression 'law in force' will have to be given its ordinary meaning. The expression 'existing Central law' would therefore include all notifications, orders ect. issued under the Central Act. In all the orders, notifications ect. issued upto 26th January 1950 under the Essential Supplies (Temporary Powers) Act which is a Central Act, whether made by the Central

Government or the State Government under delegation, the expression 'Province' or 'Provincial' by virtue of paragraph 4 (1) of the Adaptation of Laws Order, 1950.

As regards notifications and orders issued under any Bombay Act, the position is a little different. 'Existing Bombay law' has been defined in paragraph 2(1)(g) to mean any Bombay Act as defined in Section 3 of the General Clause Act, 1904 or any Ordinance or Regulation made by the Governor of Bombay under the Government of India Act, 1935 which immediately before 26th January 1950 was a law in force in the Province of Bombay or any part thereof. The expression 'existing Bombay Law' does not therefore include orders or notifications issued under any Bombay Act and therefore specific amendments will have to be made by substituting the word 'State' for the word 'Province' or 'Provincial' unless constructive reference as provided by paragraph 12 of the Adaptation Order is considered sufficient.

As regards the orders or notifications issued, whether under any Bombay Act or Central Act, after 26th January 1950, amendments will have to be made for the substitution of the word 'State' for 'Province' or 'Provincial'.

It, however, appears that the posts of (1) Provincial Textile Controller, (2) Deputy Provincial Textile Controller, (3) Provincial Coal Controller, and (4) Assistant Provincial Coal Controller have been created by Executive Orders. It is just possible that besides exercising powers and functions under the

Orders made under the Essential Supplies (Temporary Powers) Act, 1946, or the Bombay Essential Commodities and Cattle (Control) Act, 1946 the said Officers must be exercising and ~~x~~ discharging other powers and duties which are not conferred upon them by any subordinate Legislation. As pointed out above, the substitution of the word 'State' for the word 'Provincial' would not extend to any orders, rules, notifications, bye-laws ect. made under any existing Bombay law. In that case, such Officers must be exercising powers and discharging duties- whether statutory or not - under the designation as "Provincial Textile Controller" and so on. This state of law would create much legal difficulties and the best course would be to change the designations of the said 4 officers, as 'the State Textile Controller', Deputy State Textile Controller', State Coal Controller', and 'Assistant State Coal Controller' by executive orders and to take immediate steps to amend the orders issued under the Bombay Essential Commedities and Cattle (Control) Act, 1946.

o/c Sd/-
31/1t

Remembrancer of Legal Affairs.

U.R. to C.S.D.No. G- 46, dated the 31st January '51.

C.G.R./26-7 /C 5

Office of the R.L.A.

The questions referred to the R.L.A. for consideration are :

(1) Whether after the commencement of the new Constitution a State Legislature has power to ~~make~~ make a law so as to empower Government to ban the export of cattle outside the State; and

(2) Whether such a ban can be imposed by a State Government in pursuance of an existing law passed before the coming into force of the Constitution.

2. Article 301 of the Constitution provides that trade, commerce and intercourse throughout the territory of India shall be free. That article is subject to the other provisions of Part XIII in which the article occurs. One of the other provisions of Part XIII is contained in article 304. Under clause (b) of that article the Legislature of State is empowered to make a law imposing such reasonable restrictions on the freedom of trade, commerce and intercourse with or within that State as may be required in the public interest. In any given case it would be for the courts ultimately to decide whether the restrictions on the freedom of trade, commerce or intercourse imposed by a State law are reasonable or not. Article 304 (b) is practically a codification of the American doctrine of the police power of the States and, therefore, the principles enunciated in the American cases would be ~~gradly~~ gradly apply to the ~~ex~~ interpretation of that article. In the case of the Railway Road Company vs. Husen (1877) 95 U.S. 465 the Supereme Court of America has explained the limits of the regulation of inter-State commerce by a State under its police powers in the following words :-

"While we unhesitatingly admit that a State may pass sanitary laws, and laws for the protection o of life, liberty, health or property within its borders; while it may prevent persons and animals suffering under contagious diseases; or convicts etc., from entering the State; while for the purpose of self-protection it may establish quarantine and reasonable inspection laws, it may not interfere with transportation into or through the State, beyond what is absolutely necessary for its self-protection. It may not, under the cover of exerting its police power substantially prohibit or burden either foreign or inter-State commerce."

In determining whether a State law has imposed reasonable x restrictions in the public interest the court may be guided by the principles enunciated by the Supreme Court in America. What is a rea - sonable restriction will be a matter for the Court to ~~decide~~ decide.

3. As regards the second point referred to the R.L.A. so far as the State of Bombay is concerned the existing State law regulating the maintenance, supply and distribution of trade, and commerce, in cattle is the Bombay Essential Commodities and Cattle (Contro,) Act, 1946, but no power can be taken under that Act to prohibit the export of cattle out of the State.

o/c Sd/-
6/10

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G. 482 dated the 8th October '51.

C.G.R./26-7 /C 5

Office of the R.L.A.

The Civil Supplies Department has raised the following points for the R.L.A.'s consideration:-

(1) Whether in view of the Constitution of India the clause permitting Government of the licensing officer to cancel or suspend a licence without assigning any reasonn, inserted in the Textile and several other Control Orders, Requires to be amended;

(2) Whether it is necessary to record reasons in writing in each and every case before suspension or cancellation of a licence;

(3) Whether a proper inquiry has got to be held in each and every case;

(4) Whether it is possible to cancel or suspend a license under a particular order for a contravention of the provisions of any other Control Order and if under the Orders as they stand this is not permissible, whether any amendement should be made.

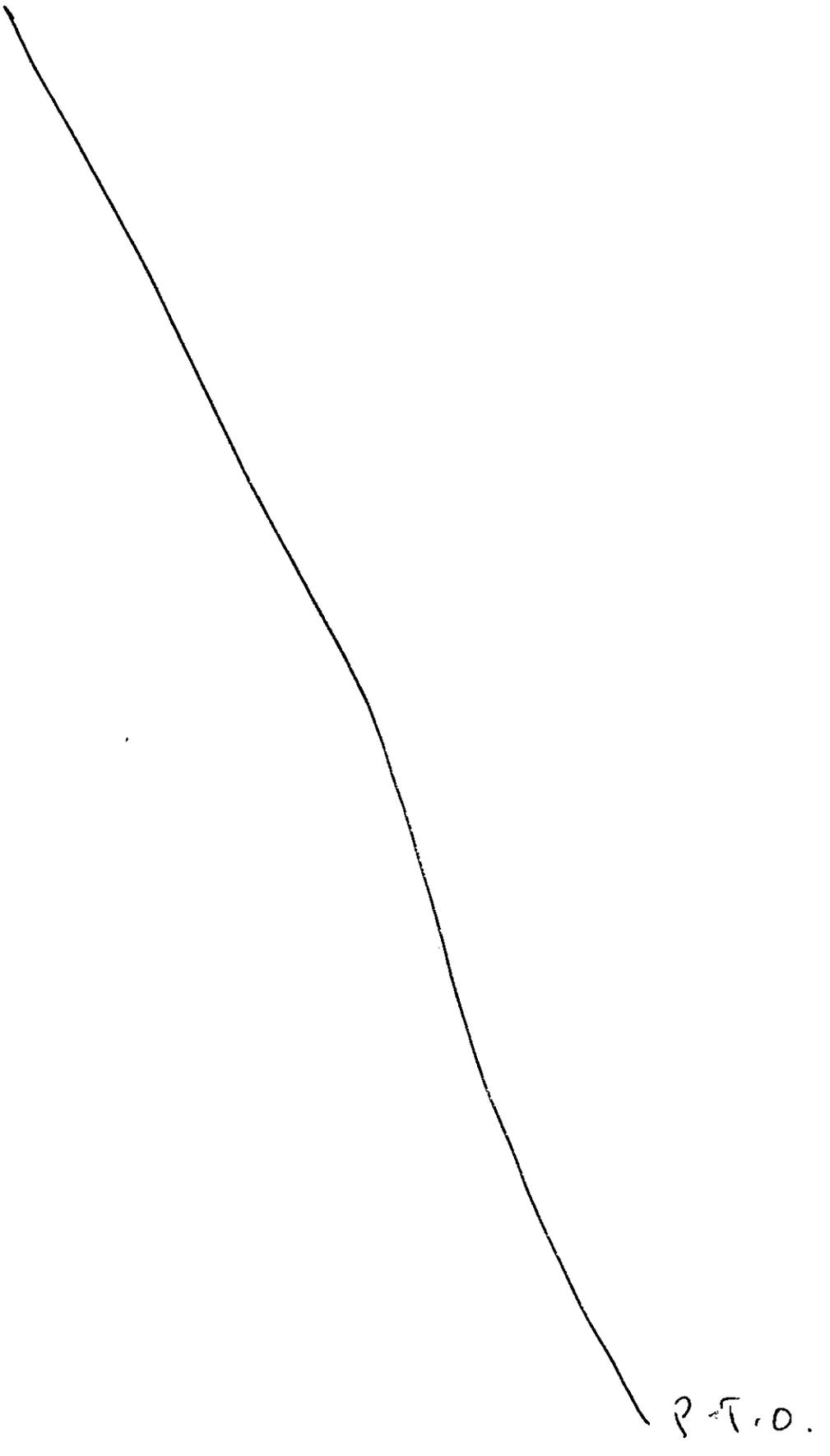
Questions No. I. The answer to this question is in the affirmative. This question was considered by the R.L.A. when there was a proposal frim the Civil Supplies Department to insert such a clause in the Bombay Cotton Cloth Dealers Licensing Order, 1949 and the R.L.A. in his opinion On. G.-441 dated the 20th December 1950 and-the-R.L.A in-his- held that insetion of such a clause was not feasible as the powers granted to the licensing authority under the el clause to cancel or suspend a licence cannot be exercised arbitarily. The Civil Supplies Department again requested R.L.A. to reconsider the matter but the Civil Supplies Department was informed in R.L.A.'s further opinion No G-51, dated the 5th February 1951 that the clause on the very face of it gives arbitrary powers to the licensing authority and cannot be construed as containg any reasonable restrictions on the right of a citizen to carry on any occupation

trade or business given to him by Article 19(1)(g) of the Constitution of India and would be void as being in contravention of Article 13(2). In view of these opinions Civil Supplies Department is advised to amend their orders in which such a clause occurs.

Question No. 2- It does not, however, seem necessary to provide in the clause conferring power to cancel the license that reasons should be recorded in each and every case before suspension or cancellation of a licence. Clause 6(i)in the Bombay Foodgrains Control Order, 1947 and Bombay Retail Trade Control and Licensing Order, 1947 and clause 9(i)of the Bombay Rice Mills Licensing Order, 1949 provide that a licensee shall not contravene any of the conditions of the license and if the licensee so contravenes any of such conditions, then without prejudice to any other action that may be taken against him, his licence ~~may be~~ may be cancelled by the Licensing Authority. Such a clause would be quite in order and it does not seem necessary to provide in such cases that the reasons should be recorded in writing. In most of the licensing Orders such a provision is made and it would be in order to continue these provisions in force. However, in some control orders there is express prvision as in clause 18 of the Bombay Charcoal and Firewood Trade Licensing Order, 1949 that the Licensing Authority may at any time for reasons to be recorded cancel or suspend any licence issued by it. In such cases reasons will have to be recorded in writing. But it cannot be said in general that unless there is provision for recording reasons in writing for suspension or cancellation of a licence, the clause would be voiid under Article 13(2) of the Constitution. However, from the administrative point of view, the licensing authority should record the reasons on the file so that if the matter goes to the court that file can be produced.

Question No. 3- Ordinarily no Government Department cancels a license without properly considering the case but it does not seem necessary ~~to do in the clause for cancellation that~~

to provide in the clause for cancellation that a proper inquiry shall be held before cancellation. From the administrative point of view



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View the reasons should be recorded on the file after proper inquiry. If the party offended by the cancellation goes to the Court, it will be for the Court to decide on the evidence produced ~~xxxxx~~ before it whether the power to cancel the licence was used arbitrarily or capriciously.

Question No.4- The answer to this is in the negative. It was advised by then R.L.A. (Shri Moos) in his opinion No. 5992 dated the 26th August 1944 that an authorization granted under the Bombay Rationing Order should not be cancelled for offending against the provisions of the Bombay Abkari Act as the matter was extraneous to the purpose set forth in the Rationing Order viz. for controlling the distribution of rationed articles This view was again emphasized in R.L.A's opinion No. G-441, dated the 20th December 1950 when it was held that the licence granted under one order cannot be cancelled for contravention of the provisions of any other order. (Also see R.L.A's No. G-479, dt. 9.5.51). As this is not permissible under the rules of natural justice, it would not be possible to amend the orders to provide for this.

Id/- J.R.DHURANDHAR.
14/11

Remembrancer of Legal Affairs.

U.R.to C.S.D.,No. G-565, dated the 14th November 1951.

MRD.
26.7.